



DEVELOPMENT OF AMENDMENTS TO RULES CONCERNING THE EXCESS LIABILITY TRUST FUND

#02-204 (FAB)

Overview

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for amendments to rules at 328 IAC 1 concerning the underground storage tank excess liability trust fund. This rule clarifies language and amends and adds requirements.

Citations Affected

Adds and amends language at 328 IAC.

Affected Persons

Underground storage tank owners and operators and Third Parties are affected by this rule.

Reason(s) for the Rule

The purpose of the rulemaking is to update the excess liability trust fund rule requirements for clarity, consistency and to make the fund more secure. The rule must provide consistency with the RISC closure options allowed by the statute at IC 13-12-3-2 and the Underground Storage Tank Rules. Several definitions are clarified or added to the rule. Other specific matters for which changes have been made included the penalty provisions; allowing access to the ELTF for successor owners or operators; a provision that the commissioner may request additional information before reimbursement is justified; clarification that approval of the corrective active plan under 329 IAC 9 is not the same as a determination that the costs are eligible for reimbursement under 328 IAC 1; as well as an update of eligible reimbursement costs; provisions for: submission of a budget, reporting credits, rebates, and refunds, and adding owner/operator signature to the claim application.

Economic Impact of the Rule

This rule will have no economic impact to the regulated community and to the state. All the remediation and closure requirements for underground storage tanks are in 329 IAC 9.

Benefits of the Rule

The rule will be easier to understand and comply with for the regulated community. The rule should prevent further abuse of the fund, through excessively expensive cleanups, thereby preserving the fund for remediations and use by the owner and operators of the fund as a financial assurance mechanism.

Description of the Rulemaking Project

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for amendments to 328 IAC 1 concerning the excess liability trust fund. Amendments are being proposed to the Excess Liability Trust Fund (ELTF) rule that would provide for additional cost accountability by claimants to the fund to ensure that the ELTF is reimbursing costs only for cost effective and reasonable remediation of releases of regulated substances and closure of tanks. The ELTF is used by owners and operators of underground storage tanks to show financial assurance under state and federal law. The ELTF has been drawn down in the past several years and may be reduced to \$25 (twenty-five) million dollars within the next year. Continued draw down of the fund creates two problems: continuing payment of claims, and maintaining the ELTF as a financial assurance mechanism for owners and operators. It is a state and federal requirement that owners and operators show one million dollars in financial responsibility if an owner has 1-100 tanks and to show two million dollars in financial responsibility if an owner has more than 100 tanks. There are other amendments in the rulemaking that are proposed to maintain the ELTF. The method for prioritization of claims in the event of a fund balance near or at \$25 (twenty-five) million dollars is proposed to be amended so that claims associated with releases that pose an immediate and significant threat to the environment in specific ways are given priority in payment. The definition of "third party liability" is clarified and the fund access section has been clarified to include access to the fund by multiple owners and operators. The schedule of specific costs allowed to be reimbursed has also been revised and updated. Any reference to 329 IAC 9 is to the amended rule adopted by the Solid Waste Management Board on October 21, 2003.

An external workgroup has been established to discuss issues involved in this rulemaking. The workgroup is made up of IDEM staff and a cross-section of stakeholders. The stakeholders consist of consultants, associations representing underground storage tank owners and operators, various contractors performing remediation, and owners and operators of underground storage tanks. Meetings were held on July 8, 2003, July 29, 2003, August 19, 2003, September 9, 2003, September 30, 2003, October 20, 2003, November 5, 2003 and January 29, 2004, to discuss issues proposed in the First Notice and the Continuation of the First Notice, related issues, and various ways of resolving those issues. Additional meetings may be held after the first hearing/meeting.

Scheduled Hearings

First Public Hearing: March 11, 2004, Indiana Government Center South, Conference Center Room A, Indianapolis, Indiana.

Consideration of Factors Outlined in Indiana Code 13-14-8-4

Indiana Code 13-14-8-4 requires that in adopting rules and establishing standards, the board shall take into account the following:

- 1) All existing physical conditions and the character of the area affected.
- 2) Past, present, and probable future uses of the area, including the character of the uses of surrounding areas.
- 3) Zoning classifications.
- 4) The nature of the existing air quality or existing water quality, as appropriate.
- 5) Technical feasibility, including the quality conditions that could reasonably be achieved through coordinated control of all factors affecting the quality.
- 6) Economic reasonableness of measuring or reducing any particular type of pollution.
- 7) The right of all persons to an environment sufficiently uncontaminated as not to be injurious to:
 - (A) human, plant animal, or aquatic life; or
 - (B) the reasonable enjoyment of life and property.

Consistency with Federal Requirements

There are no federal requirements regarding state underground storage tank trust funds.

Rulemaking Process

The first step in the rulemaking process is a first notice published in the *Indiana Register*. This includes a discussion of issues and opens a first comment period. The second notice is then published that contains the comments and the department's responses from the first comment period, a notice of first meeting/hearing, and the draft rule. The Financial Assurance Board holds the first meeting/hearing and public comments are heard. The proposed rule is published in the *Indiana Register* after preliminary adoption along with a notice of second meeting/hearing. If the proposed rule is substantively different from the draft rule, a third comment period is required. The second public meeting/hearing is held and public comments are heard. Once final adoption occurs, the rule is reviewed for form and legality by the Attorney General, signed by the Governor, and becomes effective 30 days after filing with the Secretary of State.

IDEM Contact

Additional information regarding this rulemaking action can be obtained from Lynn West, Rules, Outreach and Planning Section, Office of Land Quality, (317) 232-3593 or (800) 451-6027 (in Indiana).